

The Honorable Richard Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CHRISTOPHER KING, J.D. A/K/A
KINGCAST, and JOHN NOVAK,

Plaintiffs,

V.

LIQUOR AND CANNABIS BOARD
OF THE STATE OF WASHINGTON
"LCB"; JANE RUSHFORD, CHAIR OF
LCB AND RICK GARZA, DIRECTOR
OF LCB, JAY INSLEE, GOVERNOR
OF WASHINGTON, ROBERT
FERGUSON, WASHINGTON
ATTORNEY GENERAL AND
WILLIAM P. BARR, UNITED
STATES ATTORNEY GENERAL,
OFFICE OF NATIONAL DRUG
CONTROL POLICY

In their Individual and Official Capacities,

Defendants.

NO. 2:20-CV-01494-RAJ

STATE DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION TO FILE SECOND
AMENDED COMPLAINT

NOTE ON MOTION CALENDAR:

August 20, 2021

I. INTRODUCTION

The Honorable Jay Inslee, Governor of the State of Washington; Robert Ferguson, Washington State Attorney General; the Liquor and Cannabis Board of the State of Washington; Jane Rushford, Chair of the Liquor and Cannabis Board; and Rick Garza, Director of the Liquor and Cannabis Board (collectively, the State Defendants), oppose Plaintiffs' Motion to File

1 Second Amended Complaint (Motion) on the grounds that Plaintiffs' Motion is procedurally
 2 defective. Additionally, permitting Plaintiffs to file a second amended complaint would be futile
 3 as it would not only fail to cure the original complaint's defects, but adds additional, equally
 4 untenable claims and causes of action, resulting in a more defective complaint than the one being
 5 amended. As such, the State Defendants respectfully request that the Court deny Plaintiffs'
 6 Motion.

7 II. ARGUMENT AND AUTHORITY

8 A. Plaintiffs' Motion to File Second Amended Complaint is Procedurally Defective.

9 It is the obligation of the party filing a motion to determine the appropriate noting date and
 10 include that date in the motions' caption. LCR 7(b)(1). Additionally, a party moving for leave to
 11 amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the
 12 motion. LCR 15. The proposed amended pleading must indicate how it differs from the pleading
 13 that it amends by bracketing or striking through the text to be deleted and underlining or
 14 highlighting the text to be added. LCR 15.

15 Here, Plaintiffs' failed to note the Motion, requiring the Court to establish the date and
 16 inform the parties. Plaintiffs' second and more egregious procedural defect is their failure to
 17 indicate in any way how the proposed second amended complaint differs from the first amended
 18 complaint, requiring State Defendants to comb through the 27 pages to ascertain the proposed
 19 changes. In spite of Plaintiffs' failure to identify how the Second Amended Complaint differs
 20 from the First Amended Complaint, State Defendants are able to determine that nothing in this
 21 document cures the defects in the pleading to be amended that is the subject of a pending motion
 22 to dismiss.

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1 **B. It Would Be an Exercise in Futility to Permit Plaintiffs to File the Proposed Second
2 Amended Complaint Because it Fails to Cure the Defective Pleading, and Includes
3 Additional Defective Causes of Action and Claims.**

4 A party may amend its pleading once as a matter of course, but must seek leave of the
5 court to file additional amended pleadings. FRCP 15(a)(1), (2). Courts will freely give leave to
6 amend “when justice so requires.” FRCP 15(a)(2). The court considers five factors in deciding
7 whether to grant leave to amend: (1) bad faith; (2) undue delay; (3) prejudice to the opposing
8 party; (4) futility of amendment; and (5) whether the party has previously amended its pleading.
9 *Bonin v. Calderon*, 59 F.3d 815, 845 (1995). “Futility alone can justify the denial of a motion to
10 amend.” *Id.*. Amendment of a pleading is futile when “it is clear that the complaint could not be
11 saved by amendment” *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013).

12 Plaintiffs’ proposed second amended complaint suffers from the same defects as the first
13 amended complaint in that fails to establish that Plaintiffs’ right to relief necessarily depends on
14 resolution of a substantial question of federal law. This latest filing includes concerns raised by
15 current and former LCB employees along with additional examples of what Plaintiffs claim are
16 overreaches of LCB’s authority. Second Amend. Compl. ¶¶ 9-11, 30, 32. However, none of the
17 accusations that LCB enforcement officers are acting outside the bounds of their statutory
18 authority changes the fact that Plaintiffs’ requested relief hinges on the resolution of questions
19 of Washington State, not federal law. In addition to failing to address jurisdictional defects,
20 Plaintiffs propose to add new claims that are equally flawed and subject to dismissal.

21 Among the suspect proposed new claims are that former LCB employee Pat Kohler, in
22 conjunction with the agency, violated state ethics laws. Second Amend. Compl. ¶¶ 37-43.
23 Plaintiffs also allege that the LCB wrongfully terminated an IT employee that Plaintiffs paint as
24 a “whistleblower.” *Id.* ¶¶ 44-47. Furthermore, Plaintiffs allege that the LCB is “illegally”
25 participating in a federal asset forfeiture program. *Id.* ¶¶ 22-23. However, Plaintiffs do not
26 articulate how they are harmed by any of these actions. If the Court permits Plaintiffs to file the

1 proposed amended pleading, State Defendants would move to dismiss it on the same grounds as
2 are laid out in their pending Motion to Dismiss Pursuant to FRCP 12(b)(1) and (2), as well as
3 Plaintiffs' failure to state a claim upon which relief may be granted. Because it is clear that the
4 first amended complaint cannot be saved by amendment, the Court is well within its discretion
5 to deny Plaintiffs' Motion. *Bonin*, 59 F.3d at 845.

6 **III. CONCLUSION**

7 Because Plaintiffs cannot cure the defects in the first amended complaint through filing
8 a further amended pleading, State Defendants request that this Court deny Plaintiffs' Motion to
9 File Second Amended Complaint.

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11 DATED this 13th day of August, 2021.

12
13 ROBERT W. FERGUSON
14 Attorney General

15 s/ Michelle A. Carr
16 MICHELLE A. CARR, WSBA # 53647
17 Assistant Attorney General
18 1125 Washington Street SE
19 PO Box 40110
Olympia, WA 98504
Michelle.Carr@atg.wa.gov
LalOlyEF@atg.wa.gov
(360) 586-2644

20 Counsel for State Defendants

CERTIFICATE OF SERVICE

I, Michelle Carr, hereby certify that on August 13, 2021, I caused the foregoing **STATE DEFENDANTS' OPPOSITION TO MOTION TO FILE SECOND AMENDED COMPLAINT** and **[PROPOSED] ORDER DENYING PLAINTIFFS' MOTION TO FILE SECOND AMENDED COMPLAINT** to be served upon the below listed Plaintiffs by First Class United States mail, as well as an electronic copy, marked for delivery to:

JOHN NOVAK
20126 BALLINGER WAY NE
PMB 260
SHORELINE, WA 98155
JMNOVAK22@OUTLOOK.COM

Via PACER portal:

CHRISTOPHER KING
721 E 5TH ST #B
ARLINGTON, WA 98223

THE HONORABLE RICHARD JONES
U.S. DISTRICT COURT W.D. WASHINGTON
700 STEWART STREET SUITE 13128
SEATTLE, WA 98101-9906

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 13th day of August 2021 at Olympia, WA.

/s Michelle A. Carr
Michelle A. Carr